

United States Senate

WASHINGTON, DC 20510

December 1, 2005

Honorable Samuel A. Alito, Jr.
c/o Department of Justice
Washington, D.C. 20530

Dear Judge Alito:

Yesterday the Senate Judiciary Committee received your 64-page response to the Committee's questionnaire, along with approximately 15 boxes of materials. I write to bring to your attention what appears to be an important omission in that response and to request clarification and additional relevant information prior to the hearing.

In response to a freedom of information request, the National Archives yesterday released, among other things, a 17-page memorandum you wrote at the Solicitor General's Office, setting forth detailed legal and strategic arguments in recommending the filing of an amicus brief in the case of Thornburgh v. American College of Obstetricians.

Following your recommendation, the Government ultimately did file a brief in that case. Moreover, contrary to initial White House suggestions that you did not participate in writing the brief, former Solicitor General Charles Fried has reportedly confirmed that you helped write part of the brief, and two co-workers (including former Assistant Solicitor General Albert Lauber) recall your volunteering to help prepare the brief. Indeed, Mr. Lauber has been quoted as saying that you made a "major contribution" to it.

Although your questionnaire response mentions your work on some 34 specific Supreme Court cases, there is no mention of the Thornburgh case. Nor did you provide a copy of the Government's Thornburgh brief with the other voluminous materials given to the Committee.

This is puzzling, given that the Committee questionnaire specifically asked you to supply, in response to Question 15(f), "copies of any briefs, amicus or otherwise . . . in connection with your [Supreme Court] practice" as well as a "detailed summary of . . . the nature of your participation in the litigation." In light of your 17-page memorandum and the accounts of your former colleagues, your "participation in the litigation" was clearly substantial and perhaps even instrumental. Indeed, in your 1985 job application, written only a few months later, you appeared to highlight your work on the Thornburgh case.

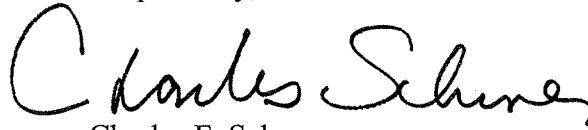
But for the National Archives release, however, your extensive participation in that case would not have come to light at all, especially given the Administration's public comments minimizing your role and its long-time blanket refusal to release documents like your Solicitor General's Office memo.

So that the Committee and the American people may have all of the necessary facts and information prior to the hearing, please provide the following information at your earliest convenience:

- Please clarify whether – apart from the lengthy legal memorandum you prepared in connection with the Government’s brief – you also participated in the drafting of the Thornburgh brief.
- Please explain why the Thornburgh case was not mentioned in your questionnaire response and why a copy of the brief was not supplied.
- Please identify any other cases on which you had such direct and significant input while at the Solicitor General’s Office, but neglected to mention in your questionnaire response.
- Please supply copies of the brief in Thornburgh and any other omitted cases you identify.

I look forward to your prompt response.

Respectfully,



Charles E. Schumer